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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 19th May, 2023

No. 13/1/9977-HII(2)-2023/7121.— In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 6/2019 dated 05.04.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SADHU RAM S/O SH. PATAN, R/O H.NO. 22, BLOCK- I, LABOUR COLONY NO. 4, INDUSTRIAL AREA, CHANDIGARH. (Workman)

AND

M/S PEARL FASTERNERS, PLOT NO. 136-140/97, INDUSTRIAL AREA, PHASE-I, CHANDIGARH THROUGH ITS MANAGING DIRECTOR/PROPRIETOR/PARTNERS. (Management)

AWARD

1. Sadhu Ram, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed as Helper/All Rounder / Peon by the management on 03.10.1995. On 07.10.1995 while on duty the workman was working on Jindi machine, his right hand slipped into the belt. With this accident his thumb of right hand was amputated. He was treated in Government Multi-specialties Hospital, Sector 16, Chandigarh. After the medical treatment the workman was given light duty by the management as Helper/All Rounder/Peon. On 23.05.2017 the workman proceeded on 23 days leave with permission of the management employer to attend the marriage of his nephew in Uttar Pradesh. The workman remained on leave from 23.05.2017 to 15.06.2017. After availing leave, the workman went to the industry on 16.06.2017 for duty. The management employer told that he should report for duty on 01.07.2017. Accordingly, the workman again approached the management for duty on 01.07.2017 but the management told that his services are no longer required. The workman remained continuous and regular service with the management from 03.10.1995 to 01.07.2017 (incorrectly written 01.07.2007) i.e. for 12 years. Refusal of work by the management on 01.07.2017 through verbal order tantamount to illegal termination of the services. The action of the management to terminate the service of the workman is illegal, unjustified, unlawful, wrongful and unconstitutional. The matter of illegal termination of

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services was brought in the notice of Labour Inspector, Chandigarh through complaint dated 07.07.2017 but none appeared on behalf of the management in the proceedings in the office of Labour Inspector. Hence, Labour Inspector advised to raise an industrial dispute regarding illegal service termination. The service of the workman was terminated without giving him any charge sheet, notice, inquiry or paying any compensation. The last wages drawn of the workman was ₹ 6,000/- per month. After termination of the workman, the management retained the junior workers in the service and appointed fresh workers in his factory. The workman has worked for more than 240 days of the service with the management employer within 12 months preceding to his date of service termination. The work against which the workman was appointed was of perennial nature and post against which the workman was appointed has not been abolished so far by the management-employer. There have been working more than 10 workers in industry/establishment of the management that is why ESI scheme was made applicable on the management industry. ESI card No.8003512 was issued to the workman. The workman is still unemployed since the date of his termination from service despite his best efforts to search the job. The workman is entitled to be reinstated in the service with continuity of service along with full back wages of the intervening period. Prayer is made that the workman may be reinstated into service with continuity of service and full back wages or any other relief which this Court may deem fit.

2. On notice, the management contested the claim statement by filing written statement on 12.12.2019 wherein preliminary objections are raised on the ground that the workman concerned was never in the employment of the management firm w.e.f. 25.04.2016. The workman has not worked for a period of 240 days in the 12 calendar months preceding the alleged date of termination i.e. 01.07.2017 as such none of his legal right have been infringed. The workman concerned has got no legal right to file the present reference. Consequently, his demand notice, statement of claim as well as present reference is liable to be dismissed on this ground alone. The present demand notice has been served by the workman under Section 2-A of the ID Act. This section envisages that for serving a demand notice under Section 2-A of the ID Act, there must be termination or dismissal or discharge of the services of the workman concerned by his employer. In the present case, neither the services of the workman have been terminated nor dismissed nor discharged by the management. Therefore, the demand notice/statement of claim is illegal and liable to be dismissed on this account also.

3. Further in parawise reply, it is stated that the factual position is that the workman concerned was initially employed as Helper on 07.10.1995 and not on 03.10.1995. He met with an accident on 11.10.1995 and remained on medical leave w.e.f. 12.10.1995 to 31.12.1995. He was covered under the Employees' State Insurance Act. The management firm was covered under the ESI Act *vide* ESI Code No.17000305190000506 and the workman concerned was having ESI insurance No.1708003512. He initially remained in the employment of the management firm till 29.03.1996. After a gap of about six years, the workman concerned was again employed on 04.04.2002 as a Peon /Helper and he continued to work as such till 17.02.2012. The workman later on visited the factory of the management firm and showed his inability to continue. He had request for his wages for February 2012 and other dues. He was paid ₹ 3,512/- towards wages for 17 days of February 2012 against his signatures on the wage register. He was also paid ₹ 29,000/- on voucher towards his other dues including gratuity, ₹ 7,000/- given to him as advance earlier was also adjusted against his full & final dues. Then, after a gap of about 6 months, the concerned workman again approached the workman for employment as Helper. He was re-employed on 01.08.2012 and remained in the employment of the management till 24.04.2016. During this period from 01.08.2012 to 24.04.2016 the workman remained on medical leave from 08.02.2016 to 22.04.2016 / 23.04.2016. 24.04.2016 was Sunday. He was to come for duty on 25.04.2016 but he did not turn up for duty on 25.04.2016 and thereafter. The workman met with an accident on 11.10.1995 and not on 07.10.1995. He was covered under ESI. He availed all medical benefits under the ESI Act. The management had also spent money for the initial treatment of the workman concerned. The workman concerned was given light duty of a Peon because of his medical treatment in the month of January 1996. He worked for 27 days in January 1996, 25 days in February 1996 and 21 days in March 1996. He remained on medical leave from 11.10.1995 to 31.12.1995. From 01.04.1996 to 30.04.2002 the workman was not in the employment of the management. The workman did not report for duty on 25.04.2016 and thereafter. Therefore, the question

of his proceedings on leave with the permission of the management on 23.05.2017 for 23 days does not arise. It is denied as wrong that the workman concerned remained on leave from 23.05.2017 to 15.06.2017. The workman never reported for duty on 16.06.2017 or 01.07.2017. A notice from the Labour Inspector was received with regard to a complaint of one 'Sadhar Ram'. This notice was replied informing the Labour Inspector that no person by the name of Sadhar Ram ever worked in the management firm. In view of the position explained above, no charge sheet, notice, inquiry or payment of any compensation was warranted or acquired to be issued or given. Further similar stand is taken as taken in the preliminary objections. Rest of the contents of the claim statement are denied as wrong and prayer is made that the present reference may be dismissed with exemplary cost.

4. The workman filed rejoinder wherein the contents of the written statement except admitted facts of the claim statement, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues are framed *vide* order dated 28.10.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, the workman Sadhu Ram examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. Besides, the workman examined AW2 Gurmeet Singh - Senior Assistant, O/o Employees' State Insurance Corporation (ESIC), Sector 29, Chandigarh, who proved documents Exhibit 'AW2/1' and Exhibit 'AW2/2'. On 24.01.2023 Learned Representative for the workman closed the evidence.

7. On the other hand, management examined MW1 Vinay Gandhi - Proprietor of M/s Pearls Fastners, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents i.e. attendance record for the period from October 1995 to January 1996 *vide* Exhibit 'M4', attendance record for the period from February 1996 to April 1996 *vide* Exhibit 'M5', attendance record for the period March 2002 to April 2002 *vide* Exhibit 'M6', attendance record for the period February 2012 to June 2012 *vide* Exhibit 'M7', attendance record for the period July 2012 to August 2012 *vide* Exhibit 'M8', attendance record for the period from February 2016 to April 2016 *vide* Exhibit 'M9' and attendance record for the period from May 2016 to July 2017 *vide* Exhibit 'M10'. On 15.03.2023 Learned Representative for the management closed evidence.

8. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

9. Onus to prove this issue was the workman.

10. To prove this issue Learned Representative for the workman referred the testimony of AW1 Sadhu Ram, who tendered his affidavit Exhibit 'AW1/A' and deposed the averments of claim statement in toto, which are not reproduced for the sake of brevity.

11. For corroboration the workman examined AW2 Gurmeet Singh - Senior Assistant, ESIC, Sector 29, Chandigarh, who deposed that he is summoned witness and has brought the summoned record i.e. copy of contribution statement for the period from 01.10.2009 to 30.09.2016 pertaining to the workman Sadhu Ram, duly attested by the Branch Manager is Exhibit 'AW2/1' and attested copy of particular of the workman Sadhu Ram maintained in ESIC Department is Exhibit 'AW2/2', which incorporates the date of appointment of the workman as 01.08.2012 and last working day as 31.07.2016.

12. On the other hand, Learned Representative for the management referred the testimony of MW1 Vinay Gandhi - Proprietor of M/s Pearls Fastners, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'M1' to Exhibit 'M10'.

13. From the oral as well as documentary evidence led by the parties, it comes out that the workman has pleaded that he worked continuously with the management from 03.10.1995 to 01.07.2017 and his services were terminated by the management on 01.07.2017. The workman is seeking his reinstatement with continuity of service along with back wages. The management has denied that the workman remained in continuous and regular service with the management from 03.10.1995. The management also denied the fact that the services of the workman were terminated by verbal order or otherwise on 01.07.2017. The management has taken the plea that the workman never remained in the employment of the management after 24.04.2016. Much stress is laid upon the fact by Learned Representative for the management that the workman has not worked for a period of 240 days in 12 calendar months preceding the alleged date of termination i.e. 01.07.2017. As far as the service period of the workman with the management is concerned, in this regard workman / AW1 in his cross-examination stated that he has the record of ESI showing that he worked continuously with the management from 03.10.1995 to 01.07.2017. AW2 Gurmeet Singh brought into evidence copy of contribution statement for the period from 01.10.2009 to 30.09.2016 pertaining to workman Sadhu Ram vide Exhibit 'AW2/1' and particulars of the workman Sadhu Ram maintained in ESIC Department vide Exhibit 'AW2/2' which incorporates the date of appointment of the workman as 01.08.2012 and last working day as 31.07.2016. When put to cross-examination AW2 admitted as correct that as per Exhibit 'AW2/1' the workman had worked for Zero days during the period w.e.f. 01.04.2016 to 30.09.2016. AW2 in his cross-examination admitted as correct that the employer is to submit half yearly returns in respect of his covered employees, the period of half yearly returns are from April to September and October to March each financial year. AW2 admitted as correct that the workman had worked for 66 days during the period from 01.04.2015 to 30.09.2015 and worked for 82 days during the period from 01.10.2015 to 31.03.2016. AW2 admitted as correct that during the period from 01.04.2015 to 30.09.2016 the workman had worked for a total period of 148 days. In the present case, the workman has not brought into evidence any document such as receipt of salary or wages for 240 days or any other document of workman's engagement for 240 days in the preceding 12 calendar months before his termination i.e. from 01.07.2017. If for the sake of arguments, it is assumed that the workman did not returned to duty after dated 24.04.2016, in that situation the last working day of the workman with the management is 24.04.2016. The workman has not only failed to prove that he worked for 240 days in the 12 calendar months preceding his termination i.e. from 01.07.2017 but also failed to prove that he worked for 240 days in the 12 calendar months preceding 24.04.2016. As discussed above, AW2 in his cross-examination stated that during the period from 01.04.2015 to 30.09.2016 the workman had worked for a total period of 148 days. Learned Representative for the workman argued that during the period from 01.04.2015 to 30.09.2016 the workman remained on 61 days sanctioned medical leave and the said period has not been counted. If the period of 61 days is added to 148 days, even then it comes to 209 days which is less than 240 days. Thus, the workman did not work for a period of 240 days preceding to 25.04.2016. No relevant material is produced by the workman to show that he had continuously worked from October 1995 to 01.07.2017 as alleged by him and the workman has also not brought on record any evidence to show that he had worked for 240 days preceding his alleged date of termination 01.07.2017. Apart from that the workman after seeing the original wage register Exhibit 'M1' identified his signatures on revenue stamp showing receipt of salary of 17 days of February 2012 in the sum of ₹ 3,512/-. The workman also seen the original vouchers Exhibit 'M2' and Exhibit 'M3' showing receipt of advance of ₹ 7,000/- and ₹ 29,000/- respectively. The workman has not challenged the authenticity of these vouchers in cross-examination of MW1.

14. The evidence led by the workman as well as the ESI record produced on behalf of the workman does not show that the workman had worked for 240 days preceding his alleged date of termination i.e. 01.07.2017 or preceding 25.04.2016 (the management has pleaded that the workman did not returned to duty after 25.04.2016).

15. As per the settled law, a workman is not entitled to seek benefit of Section 25-F of the ID Act in case he has not worked for a period of 240 days in the preceding 12 calendar months from the alleged date of

termination. Statutory protection under the ID Act could only be invoked by the workman on completion of 240 working days service preceding 12 calendar months. In the present case, the workman has failed to prove that he had worked for 240 days in 12 calendar months preceding his alleged date of termination i.e. 01.07.2017. The case law referred by Learned Representative for the management reported in **2018(2) SCT 553 (SC)** titled as **Mohd. Ali Versus State of H.P. & Others** and **2002(3) SCT 382 (SC)** titled as **The Range Forest Officer Versus S. T. Hadimani**, are applicable to the facts of the present to an extent. In the present case, since the workman had failed to show that he had in fact worked for 240 days in the year preceding his termination, thus, the workman is not entitled to take benefits of the provision of Section 25-F of the ID Act.

16. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

17. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 05-04-2023.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,

Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No.PB0152

SECRETARY LABOUR
CHANDIGARH ADMINISTRATION

CHANGE OF NAME

I, Santosh *alias* Santosh Kumari, W/o Jatinder Hans, # 260/1, Sector 41-A, Chandigarh, have changed my name to Santosh Hans.

[723-1]

I, Rahul, S/o Joginder Sharma, R/o House No. 183, Village Hallo Majra, Chandigarh-160002. Declare that I have changed my name from Rahul to Rahul Vishwakarma.

[724-1]

I, S. Ganeshan, S/o G. Srinivasan, R/o 3438, GF, Sector 46-C, Chandigarh, have changed my name to Srinivasan Ganeshan.

[725-1]

I, Lata Masih, W/o Sh. Barkat Masih, # 321/D, Shastri Nagar, Manimajra, Chandigarh, have changed my name to Morin Lata.

[726-1]

I, Ram Soni, S/o Chander Dev Soni, R/o # 05, Baundri No. 198, Hallomajra, Chandigarh, is hereby declare that my father's name may be treated as Chander Dev Soni, instead of Chandradev Soni and Chanderdev Soni for all purposes in future and further my mother's name may be treated as Pushpa Soni instead of Pushpa Devi.

[727-1]

I, Pushpa Devi, W/o Munish Kumar, R/o # 742, New Indira Colony, Manimajra Chandigarh, have changed my name to Pushpa Rani.

[728-1]

I, Manish Kumar, S/o Harichand Lal, R/o # 742, New Indira Colony, Manimajra Chandigarh, have changed my name to Munish Kumar.

[729-1]

I, Alka Heer, W/o Sh. Kashmir Singh, R/o 2461, Telihos Society, Sector 50-C, Chandigarh, have changed my name Alka to Alka Heer.

[730-1]

I, Soni Sharma, W/o Saurabh Sharma, House No. 3128/1, Sector 45-D, Chandigarh, have changed my name Soni to Soni Sharma.

[731-1]

I, Raghubir Singh, S/o Hardial Singh, # 2213, Mari Wala Town, Manimajra, Chandigarh, changed my name Raghubir Singh.

[732-1]

I, Rajinder Kumar, S/o Bachna Ram, R/o 13, Village Bhagwanpura Kishangarh, Chandigarh, have changed my minor son's name Ankit to Ankit Kumar.

[733-1]

I, Paramjit Singh, S/o Sh. Resham Singh, R/o H. No. 4350/A, Sector 46-D, Chandigarh, have changed my name from Paramjit Singh Khose to Paramjit Singh.

[734-1]

I, Rajpal, S/o Anoop Singh, # 1485, Sector 20-B, Chandigarh, have changed my name to Rajpal Siwach.

[735-1]

I, Jyoti Chawla, W/o Vishal Vij, R/o House No. 2609, Sector 37-C, Chandigarh, have changed my name to Jyoti Vij.

[736-1]

I, Jasvir Kaur, W/o Avtar Singh, # 467, VPO Maloya, Chandigarh, have changed my name to Jasveer Kaur.

[737-1]

मैं, चांदनी, पुत्री राजबीर सिंह, निवासी # 2471/2, स्माल फ्लैट, न्यू मलोया यू.टी. चंडीगढ़, घोषणा करती हूँ कि मैंने अपना नाम चांदनी से बदलकर चांदनी राणा रख लिया है।

[738-1]

I, Rekha, W/o Arjun, R/o H. No. 208, Village Dariya, U.T. Chandigarh, have changed my minor daughter name from Sadhya Shakti to Radhika.

[739-1]

I, Bablu Sharma, S/o Sh. Shanker Sharma, R/o House No. 374, Vill. Mauli Jagran, Chandigarh, have changed my minor son name from Ravi Kumar to Ravi Sharma.

[740-1]

I, Bablu Sharma, S/o Sh. Shanker Sharma, R/o House No. 374, Vill. Mauli Jagran, Chandigarh, have changed my minor daughter name from Muskan to Kavya Sharma.

[741-1]

I, Rasheeda, W/o Mubarik Husain, R/o # 217, Sector 55, Palsora, Chandigarh, have changed my name to Rasheeda Khatoon.

[742-1]

I, Brij Lal, S/o Late Sh. Ram Raj Yadav, # 2640, Sector 28-C, Chandigarh, have changed my name Brij Lal to Brij Lal Yadav.

[743-1]

I, Kumar Gaurav, R/o H. No. 3216, Sector 44-D, Chandigarh, changed my minor son's name Abhiraaj to Abhiraaj Kurl.

[744-1]

मैं, अजय कुमार, पुत्र अनिल प्रसाद, निवासी 258/4, हल्लोमाजरा, चंडीगढ़, ने अपना नाम बदलकर अजय प्रसाद रख लिया है।

[745-1]

I, Meenakshi Bains, W/o Rakesh Kumar Bains, R/o # 3409/2, Sector 40-D, Chandigarh, have changed my name to Meenakshi Randhawa.

[746-1]

I, Sunny, S/o Kashmir Chand, R/o # 2534, Sector 52, Chandigarh, have changed my name from Sunny to Sunny Kumar.

[747-1]

I, Gaurav, S/o Sh. Krishan Lal, R/o # 3081, Sector 19-D, Chandigarh, have changed my minor son name from Sahij Kumar Sarsval to Sehaj Kumar Sarswal.

[748-1]

I, Harish Kumar, S/o Mange Lal, # 706/1, Bapu dham colony, Sector-26, Chandigarh, have changed my minor son name from Vansh to Vansh Nagerwal.

[749-1]

I, Anju, W/o Parmod Kumar, # 2676, Sector 20-C, Chandigarh, have changed my minor son name from Aditya to Aditya Jagpal.

[750-1]

I, Nrip Sabharwal, S/o Rajeshwar Kumar Sabherwal, # 673, Sector 8-B, Chandigarh, have changed my name to Nrip Sabherwal.

[751-1]

I, Ravinder Kumar, S/o Bachanu Paswan, House 3654, Sector 25-D, Chandigarh, have changed my name from Ravinder Kumar to Ravinder Kumar Paswan.

[752-1]

I, Ragni Devi, W/o Dinesh Singh, House No. 2034, Sector 52, Chandigarh, have changed name of my minor son from Meghnath to Gautam.

[753-1]

I, Osheen Gurung, D/o Neer Bahadur, R/o H. No. 1604, Sector 18-D, Chandigarh, have changed my name from Osheen Gurung to Osheen.

[754-1]

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